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# CANADIAN PERFORMERS

How to Enter the United States

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Canada



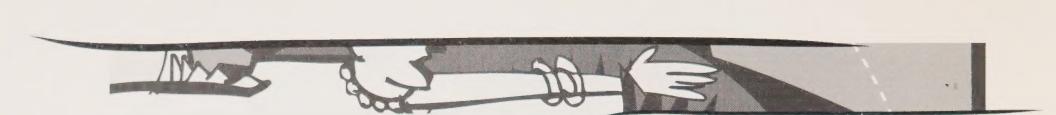
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# CANADIAN PERFORMERS

How to Enter the United States



## INTRODUCTION

You are a Canadian performing artist or a member of a Canadian entertainment group in a creative field such as music, opera, dance or theatre, or you are a circus performer. You have just signed a contract with a U.S. employer for a single performance or a tour in the United States. Besides the travel and accommodation arrangements, you need a visa for temporary employment in the United States. So now what do you do?

This guide outlines the United States Immigration and Naturalization Service (USINS or INS) visa classifications, procedures, required materials and deadlines related to individual Canadian performing artists as well as theatre, dance and musical troupes based in Canada, but not necessarily employing solely Canadians. Included in this guide are lists of INS offices, labour unions, immigration and tax lawyers and other resources. While the INS petition process is essentially the same for non-Canadian nationals as it is for Canadian nationals, there are some procedures that are unique to Canadian nationals. Where this is the case, the word "Canadian" is in **bold**.

Although the petitioner (U.S. presenter, management, immigration lawyer or other party) must be based in the United States, the Canadian artist and his/her manager should be fully aware of the INS process. It is the artist and/or his/her management that must provide the U.S. petitioner with the vast majority of the required materials and information. The key to success in dealing with the USINS is to gather all the documentation early and to anticipate problems before they arise. The INS process should commence between the artist and the U.S. petitioner during the booking process. According to research conducted by Arts Presenters in the United States, 90 percent of petitions that are returned are returned because of missing information, mistakes and miscalculations.

Although every effort has been made to provide current and accurate information in this guide, changes do occur. You are encouraged to contact the USINS, the U.S. Embassy or a U.S. consulate in Canada for up-to-date information. You may receive conflicting information, however, as many U.S. government personnel are not familiar with the performing arts in general or the specific quirks of visa classifications for performing artists.

# U.S. IMMIGRATION TALK

## Definition of Terms

Before proceeding onward through this guide, it is best to define certain terms that will be used throughout.

### Alien

Anyone who is not a U.S. citizen.

### Beneficiary

The alien artist or personnel of an alien group who will be touring with the visa being applied for.

### Form I-129

The primary INS form used for a Petition for a Non-Immigrant Worker. It is filled out by the petitioner. It is used for all classifications described in this guide.

The I-129 includes:

- two pages (seven parts) of general information regarding the petitioner and the beneficiary;
- one Supplement for beneficiary information for petitions with two or more beneficiaries;
- one Supplement titled "O and P Classification."

See "The Petition."

**Warning:** The INS instructions for filing the I-129 do not include a description of the P-1 or P-3 classifications, as the last update to this document was made in 1990.

### New: Premium Processing Service (PPS)

**Form I-907:** This is the new Premium Processing Service (PPS) form. In effect as of June 1, 2001, it is used for expedited processing, with a fee of US\$1,000 per petition. With PPS, the INS guarantees adjudication by an INS service center within 15 calendar days of the receipt of the petition by the INS or your money back. It is either sent with the original petition or it can be sent separately. For more information on the PPS, see "The Petition" and "Frequently Asked Questions."

For rulings on the PPS and INS thinking behind it, and to download Form I-907, go to the USINS Web site.

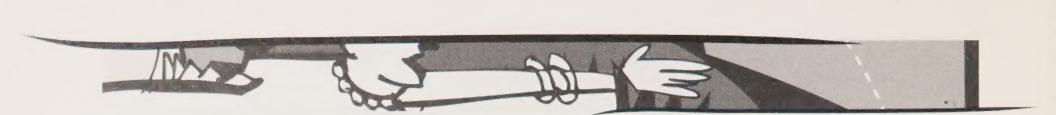
### Form I-797 Notice of Action

The I-797 is the *Notice of Action*. After receiving a petition, the INS will send an I-797 *Receipt Notice*, followed by an *Approval Notice*, a *Denial*, or a *Request for further information*. The I-797 will state the classification, the dates of intended employment, the petitioner and the beneficiaries. The I-797 will have a Receipt Number beginning with the three-letter INS service center code.

#### TIP

Keep a record of all I-797 Approval Notices for future petitions.

**The I-797 is not your visa** (see "Visa" below). It is simply permission for an alien to now go and apply for a visa at a U.S. embassy or consulate. If, however, you are a **Canadian** national, the I-797, together with a valid passport, is all that is required at a port of entry (POE) or pre-flight inspection. See the section "You're Approved — Now What?"



### Form I-94

The VERY IMPORTANT small white card that is issued when entering the country. It is your Arrival/Departure Record. It states the visa classification and the length of stay. Once you are in the country this is more important than the I-797 or visa itself. If the artist will be doing multiple entries within the approved employment period, he/she should make every effort to retain the I-94 until he/she departs the United States for the last time within the approved employment period. **Canadians** who travel to the United States on business or as tourists generally do not receive an INS Form I-94. However, personnel with Canadian groups who are not Canadian nationals will be issued I-94s.

### Kickbacks

A blue form that an INS service center may send to the petitioner requesting additional information or materials. Follow the instructions and complete within the deadline designated on the form. Generally speaking, INS service centers respond quickly upon receiving a kickback response.

### Petition

The complete application package prepared for the INS, including Form I-129 and its supplements, union consultation letter(s), any addendum, performance contracts, support letters, press materials, etc. See "The Petition / Petition Materials."

### Petitioner

The person, or organization, that will submit the petition on behalf of the artist. Note that this person or organization must be a **U.S.-based employer, agent, manager, sponsor, lawyer, presenter or other party**. This person or organization should have a good working knowledge of the entire INS procedure.

### Service Center

There are four USINS service centers in the United States: St. Albans, VT; Lincoln, NE; Dallas, TX and Laguna Niguel, CA. Each has jurisdiction for the states in its region.

See "The Petition / Where to File Your Petition" for a list of the service centers and their respective jurisdictions.

### Visa

The physical item entered into a passport that contains a photo and certain information, including the classification involved and dates of intended employment. It does not convey any status, but rather is permission for the alien to present himself/herself at the U.S. port of entry for admission in the classification designated by the I-797 Approval Notice. In most cases, visas are issued for multiple entries within the time period designated on the I-797.

Note: **Canadians** do not generally require a visa unless entering as a Treaty Trader, classification E. Nonetheless, Canadian artists and groups must go through the petition process and obtain the I-797 Approval Notice. Presenting the original I-797 at a port of entry or pre-flight inspection, together with a valid passport (valid for six months beyond the intended dates of employment in the United States), is generally all that is then required for entry.

### TIP

When presenting yourself at the POE, pre-flight inspection or a U.S. embassy or consulate, be sure to have a copy of the complete petition sent to the INS, together with your I-797.



For **Canadian groups** with personnel who are NOT Canadian nationals, those personnel must apply for visas at the nearest U.S. embassy or consulate.

## NON-IMMIGRANT VISA CLASSIFICATIONS

Listed here are the USINS classifications under which an artist or performing group and their support personnel can enter the United States. It is the responsibility of the artist or artist's manager to provide the U.S. petitioner with the necessary and appropriate documents that support the artist's classification.

The artist and/or his/her manager should determine the classification under which the visa will be sought during the booking process and work with the presenter in acquiring the necessary support documents to demonstrate eligibility in a particular classification. Generally speaking, the artist should document his/her classification with press materials, together with additional testimonials if necessary.

Once you have determined the classification under which you will apply, see "The Petition."

### O-1

*For an individual (one person only on the petition) of extraordinary ability (distinction) in the sciences, arts, education, business, athletics, or extraordinary achievements in the motion picture and television fields*

O-1 visas are for the principal creator, performer or essential person who has significant creative input or responsibilities. Under the INS's broad definition of "arts" this can include a:

performer, director, set designer, lighting director, sound designer, choreographer, conductor, arranger, costume designer, makeup artist, fight master, stage technician or animal trainer.

There are two ways in which you can demonstrate "extraordinary ability" for an O-1:

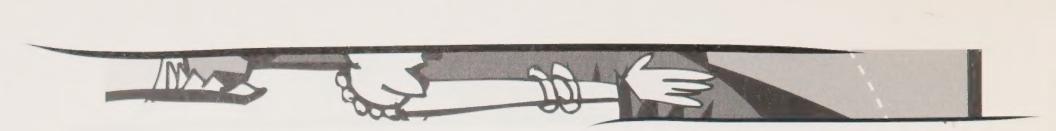
- a) The alien has received or been nominated for a significant national or international award such as an Academy Award, an Emmy, a Grammy or a Directors Guild Award.
- or**
- b) The alien meets at least three of the following accomplishments:

1. has performed, or will perform, a lead or starring role in a production or event having a distinguished reputation;
2. has achieved national or international recognition;
3. has achieved major commercial or critical success;
4. has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field;
5. has commanded, or now commands, a high salary or other substantial remuneration for services in relation to others in the field.

#### TIP

Unless the alien can clearly establish eligibility with the criteria in approach "a," approach "b" is a better bet. Approach "a" can conceivably give the INS a way to deny the petition.

*Reminder: The O-1 classification is for one person only.*



An O-1 visa is approved for a maximum of three years for a specific performance, film shoot or tour. Extensions for continuing or completing the same activity must be requested on a new Form I-129 and may be approved in one-year increments.

## O-2

### *For essential support personnel (including performers) accompanying the O-1 performer of extraordinary ability or achievement*

You qualify for an O-2 visa if you do not have a lead, starring or critical creative role but are nonetheless an integral part of the performance, motion picture or television production. The O-2 person(s) are “essential support personnel” of the O-1 alien performer. While this seems the same as described for an O-1, the “extraordinary ability” is less stringent. For the O-2 you must submit documented evidence demonstrating that you possess “critical skills and experience” based on a **long-standing working relationship with the O-1 artist** and/or perform an essential role that cannot be readily performed by other persons.

#### **TIP**

Because the criteria are so strict for O-1, if there are aliens accompanying the O-1, from the petitioner's standpoint it is easier, more efficient and safer to put all other personnel on an O-2 petition.

Personnel accompanying performers on an O-2 classification include accompanying musicians, backstage assistants, stage technicians, lighting and sound engineers and others who may not qualify for O-1 visas individually.

The O-2 petition must be a **separate petition** from the one used to request the O-1 visa, and must be submitted to the USINS in conjunction with the O-1 visa petition.

The duration of the O-2 visa will be the same as the accompanying O-1, up to a maximum of three years for the event, specific performance, film shoot or tour. Extensions for continuing or completing the same activity must be requested on a new Form I-129 and may be approved in one-year increments.

## P-1

### *Members of an internationally recognized entertainment group*

(music ensembles, dance and theatre companies, circus troupes)

The definition of an “internationally recognized entertainment group” is similar to that for an O-1 (extraordinary ability/distinction), but even more stringent. It is the reputation of the group (musical ensemble, dance or theatre company or circus) that must be demonstrated, not the individual achievements of its members. The group must be acclaimed in more than its home country.

A group can demonstrate *international recognition* with at least three of the following:

1. significant award(s), prize(s), recordings, videos, films;
2. has achieved recognition outside its home country;
3. has performed and will perform in venues and events having a distinguished reputation;
4. has received international recognition from critics, governments, organizations;
5. has commanded, or now commands, a high salary or other substantial remuneration for services in relation to others in the field.



The INS may be flexible with its definition of *international recognition* if the group in question has such an outstanding national reputation that it has now been asked to make its U.S. debut (in venues and/or events having a distinguished reputation).

It is important to note that for the P category, 75 percent of the group's members must have been with the group for at least one year. Full-time employment is not a requirement, but the members must be regularly employed by the group. The INS will waive the 75 percent rule if:

- someone in the group is replaced (at the time of the petition) due to illness or "exigent circumstances";
- the alien(s) is/are augmenting the group temporarily for a particular production/event;
- the alien(s) enter(s) the United States to perform in an integral and essential role as part of a nationally recognized circus act.

In general, the INS is somewhat flexible with this ruling for duos, trios and quartets — especially if they fully satisfy the P-1 requirements.

When requesting a waiver from either the international recognition or one-year relationship requirement, be sure to support your claim with documented evidence, even written expert opinions if necessary.

A P-1 visa is approved for a maximum of one year for a specific performance or tour. Extensions for continuing or completing the same activity must be requested on a new Form I-129 and may be approved in one-year increments.

Note: The State Department Web site states that there is a cap of only 25,000 P-1 visas granted per fiscal year, so you should apply as early as possible.

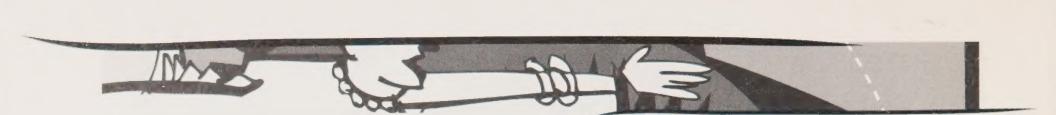
## **P-2**

### ***Participant(s) in a reciprocal exchange program***

You qualify for a P-2 if you are entering the United States temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the United States and an organization in another country.

The sponsoring organization or employer in the United States must file the petition. In addition to materials described in "The Petition," the P-2 petition must include:

1. written consultation with the appropriate labour organization(s);
2. a copy of the formal reciprocal exchange agreement between the U.S. organization(s) sponsoring the aliens and the organization(s) in a foreign country that will receive the U.S. artists;
3. a statement from the sponsoring organization describing the reciprocal exchange, including the name of the receiving organization abroad, names and occupations of U.S. artists or entertainers being sent abroad, the length of their stay, activities in which they will be engaged and the terms and conditions of their employment;
4. evidence that the aliens and the U.S. artists are experienced artists with comparable skills and that the terms and conditions of employment are similar.



For **Canadian** artists and groups: Both the American Federation of Musicians and the Actors' Equity Association engage in exchanges between Canadian and American chapters. The American Federation of Musicians will be the petitioner, and you should contact the Toronto office for details. Actors' Equity will provide the necessary exchange documentation for your presenter to submit.

Petitions for support personnel must be filed on a separate form, but submitted in conjunction with the petition for the main performer(s).

A P-2 petition is approved for a maximum of one year for a specific performance or tour. Extensions for completing the same activity must be requested on a new Form I-129 and may be approved in one-year increments. Note that the U.S. union may act as the petitioner in P-2 cases.

### **P-3**

#### *Culturally unique performers, performing groups, teachers or coaches*

You qualify for a P-3 visa if you are a "culturally unique" individual performing artist or entertainment group entering the United States to perform, teach or coach under a commercial or non-commercial "culturally unique" program.

"Culturally unique" means "a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe or other group of persons." For the P-3 classification there is no specific time the members have to have been together.

The INS allows a fairly broad definition of "culturally unique." Generally, letters from recognized experts, testimonials and affidavits are sufficient. One can also demonstrate cultural uniqueness through press reviews, articles, letters from foreign governments, awards, prizes and other promotional materials.

The P-3 individual or group must be performing for a culturally unique event or series. This can be demonstrated with the support letter(s) submitted by the presenter(s) describing the cultural series the performer or group will be part of, and a statement from the performer or group that they will be presenting a program of culturally unique repertoire.

A P-3 visa is approved for a maximum of one year for a specific performance or tour. Extensions for continuing or completing the same activity must be requested on a new Form I-129 and may be approved in one-year increments.

### **P Support Personnel**

Although similar in procedure, essential support personnel for P-1, P-2 or P-3 groups petition separately from the corresponding P petition for the performers. While the P support petition is separate from its corresponding main petition, **it cannot be submitted in advance of the main petition.** It is recommended you file the P support petition at the same time as its corresponding main petition.

You must submit documented evidence establishing the "essential role, critical skills and experience" of the support person(s) to the group. This usually takes the form of a statement describing the production and the specific roles and essentiality each support person plays. Attached to this statement should be brief biographies (one or two paragraphs) on each support person.



Support personnel include stage technicians, sound and light technicians, road managers, stage managers, costume persons, etc.

The INS designates support petitions as P-1S, P-2S or P-3S respectively.

Unlike the O-2, the INS does not require that P support personnel have prior experience with the particular alien or group.

## **H-2B**

### ***Musicians to be employed within 50 miles of the Canadian border***

If you are a musician and are going to perform within 50 miles (80 km) of the Canada-U.S. border, you have the option of applying under a less stringent visa classification rather than under the various O and P categories. The H-2B classification is intended for temporary workers entering the United States "to engage in non-agricultural employment which is seasonal, intermittent, to meet a peak load or need, or a one-time occurrence."

However, the U.S. Department of Labor made special allowances for **Canadian musicians** by pre-certifying that qualified persons are unavailable along the Canada-U.S. border, and that the admission of Canadian musicians would not adversely affect the wages and working conditions of Americans who are similarly employed.

Just as for the other visa classifications, the petition must be filed by your presenter in the United States using Form I-129 and must be accompanied by documented evidence of your standing as a musician. Your presenter should:

1. complete and clearly indicate on the I-129 Form that you are requesting the H-2B classification;
2. fill out and include the related H supplement;
3. submit documented evidence (which you should furnish to your presenter) along with your petition outlining your, or your group's, credentials and all other pertinent information (copy of the contract, itinerary, advertisements, list of band members, etc.).

No union consultation is required for the H-2B category.

The H-2B classification is ideal for promising Canadian musicians (including essential support personnel) who wish to showcase their talent in the United States but do not yet qualify for O or P entry.

Note: There is a cap of 66,000 individual H-2B visas granted per fiscal year, so you should apply as early as possible. Furthermore, H-2B admission is limited to 30 days. If your services are required for a longer period, your employer must file with the U.S. Department of Labor for the required labour certification before filing the petition.

## **Spouses and Dependents**

The spouse and unmarried children accompanying an O-1, O-2, P-1, P-2 or P-3 performing artist or essential support person may qualify for an O-3 or P-4 visa (depending on the related performer's visa classification). Accompanying dependents must provide evidence of their relationship to the

### **TIP**

Avoid spouse/dependent(s) joining the principal beneficiary after he/she is in the United States. Obtain visas for spouse and dependents at the same time as for the principal beneficiary.



beneficiary at the time of application for the beneficiary's visa (at a U.S. embassy or consulate, port of entry or pre-flight inspection).

DO NOT include spouse or dependents on the principal beneficiary's INS Form I-129.

If the spouse/dependent(s) are **Canadian** citizens, presenting proof of relationship, together with the principal beneficiary's I-797 and valid passport, suffices at a port of entry or pre-flight inspection.

If the spouse/dependent(s) are not Canadian citizens, they will use the principal beneficiary's I-797 Approval Notice to obtain their visas at a U.S. embassy or consulate abroad.

The spouse/dependent(s) of an alien with an O or P visa are not allowed to work unless they file their own I-129 petition.

The duration of a dependent's stay in the United States is the same as that of the primary beneficiary.

## THE PETITION

Now that you've determined your classification, it's time to put together the petition. Be meticulous; be consistent in your answers (you'll be repeating information — stick to the same order of facts); be neat; triple-check everything; and arrange the final petition in an organized and easy-to-read format.

From start to finish, the INS timeline looks something like this:

- book performance date/tour; determine INS classification; gather materials needed for INS petition;
- designate petitioner (must be U.S.-based);
- prepare INS petition package;
- send copy of INS petition to labour union(s) for consultation letter(s);
- receive labour consultation(s) (2-10 days); make copies for petition;
- petitioner sends petition (in duplicate) to INS service center;
- send copy of petition to artist;
- artist contacts the nearest U.S. embassy or consulate to obtain forms and instructions for visa application (non-Canadians only);
- petitioner receives Receipt Notice from INS (2-3 weeks);
- petitioner receives I-797 Approval Notice (15-120 days, depending on whether Premium Processing is used);
- petitioner sends original of I-797 to artist;
- if applicable, artist makes appointment with U.S. embassy or consulate to apply for and obtain visas (Canadian nationals need only present the I-797 at port of entry or pre-flight inspection).

## Premium Processing Service (PPS) and Deadlines

As of June 1, 2001, with the introduction of the Premium Processing Service (Form I-907), the turnaround time for the four INS service centers can no longer be



counted on to fall within the traditional 30-60 days, depending on the service center. There are now two tiers of adjudication — with and without PPS.

For petitions filed **WITH the PPS**: The INS guarantees adjudication (approval, denial or request for additional information) within 15 calendar days for an additional fee of US\$1,000 per petition. If they fail to adjudicate in 15 days, they return your US\$1,000 and the petition is placed in the general pool of “standard processing” petitions.

For petitions filed **WITHOUT the PPS**: It is advisable at this time to plan on 120 days, regardless of the service center used. Indications since June 1, 2001, are that the four service centers need the maximum time possible to process non-PPS petitions. **However, petitions cannot be filed more than six months in advance.**

To avoid the PPS fee, you need to start your paperwork earlier and move up your usual timetables (for hiring personnel, finalizing tour details, etc.) accordingly. Determining your proposed classification and gathering materials must begin when the booking process itself starts.

**Note:** In theory, one can submit a Form I-907 for the Premium Processing Service after filing a “standard processing” petition.

*Clarification:* Many have interpreted the INS rulings on the Premium Processing Service to mean that petitioners that are non-profit organizations are exempt from the US\$1,000 PPS fee. While non-profit petitioners are indeed exempt from the fee, this does not mean they can file a Form I-907 and receive its benefits. They must pursue the traditional expedite process, based on five criteria:

- severe financial loss to a company or individual;
- extreme emergent situation;
- humanitarian situation;
- Department of Defense or national interest situation;
- INS error.

The first is the simplest to prove in most cases; however, the INS will ask why the petition(s) was not filed sooner. Non-profit organizations are the only ones that can utilize the old expedite processing procedures.

## Fees

INS fees that pertain to the performing arts include the following:

I-129 petition ..... US\$110 per petition  
(regardless of the number of beneficiaries)

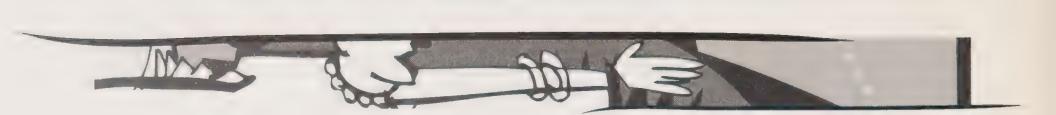
I-907 Premium Processing Service fee ..... US\$1,000 per petition

I-824 application ..... US\$120 per application  
(request for additional copies of I-797)

I-539 application ..... US\$120 per application  
(for extension/change of stay for a spouse and/or dependent)

## TIP

When writing cheques to the INS, be sure to spell it out: Immigration and Naturalization Service. The cheque for the I-129 is to be attached to the I-129. A separate cheque must be written for an I-907 PPS and attached to the I-907.



Other costs:

- courier service (Federal Express is the most reliable to INS service centers; however, some service centers do not accept courier deliveries — see “Where to File Your Petition”)
- copying costs (you will need five to seven copies of each petition)

*Visa fees (if applicable):*

These are the fees that U.S. embassies and consulates charge for the actual visa you apply for once you have your I-797 from the INS. These fees are based on reciprocal agreements with other countries. There are two types of visa fee: “application” and “issuance.”

If applicable, the “application” fee is US\$45 per person.

If applicable, the “issuance” fee varies from country to country and is in addition to the “application” fee.

For a complete table listing the visa reciprocity fees, visit the U.S. State Department Web site.

Note: For **Canadians** visa “application” and “issuance” fees are not applicable. However, if a Canadian performing arts company (dance, theatre, circus) has personnel who are non-Canadian nationals, those individuals may be subject to visa fees.

For example: For a **Canadian** ensemble of all-Canadian nationals (regardless of the number of beneficiaries), filing a P-1 petition, with a P-1S support personnel petition, using the Premium Processing Service and requiring one union consultation for each petition, the total cost will be approximately US\$2,400. If the Canadian ensemble includes, say, five non-Canadian nationals, add US\$225 in visa “application” fees, plus any applicable “issuance” fees.

The booking process is a good time to discuss with the presenter(s) who will pay the INS petition fees, courier and copying costs, the visa application fee (if applicable) and the visa issuance fee (if applicable).

## **Union Consultation**

The O and P classifications require an advisory opinion from an appropriate labour union. Prepare the INS package as described below in “Petition Materials”; however, before sending it to the INS, courier a copy of the petition to the appropriate union(s) with a cover letter explaining your request.

The cover letter should indicate the following:

- the date;
- union name and address;
- classification being sought (and whether Premium Processing Service is being used);
- beneficiaries (e.g., seven musicians of the group XYZ, with names listed in alphabetical order: last name in capital letters, then first name);
- petitioner name and address;
- dates of intended employment.



The cover letter should request an advisory opinion for the mentioned artist/group (or support personnel) with a brief description of the artist/group and the performance/tour it will be presenting. When seeking an advisory opinion for support personnel, a section of the petition should contain a one-page description of the essentiality of the support personnel to the production and brief biographies of each.

In all but the rarest of cases, the union will respond with a brief letter stating it has no objections to the petition for an O or P (or support O/P) approval. The labour consultation is supposed to address the type of work to be done and the artist's ability to carry out that work. Regardless of whether the union letter is positive or negative, it is not considered binding on the INS. If a union does have an objection, it is usually because low wages are being paid to the beneficiary, because there are U.S. workers available to do the job or because the beneficiary does not meet the standards of the visa classification being sought. It is for this reason that you should eliminate unnecessary support personnel for P support personnel petitions.

If you receive a negative consultation, seek the expert opinion of a "non-labour" source that can back up your claim and rebut the union's opinion. Then file the petition with the INS. Non-labour sources include Opera America, American Symphony Orchestra League, Arts Presenters, Chamber Music America, and Dance/USA (addresses follow).

If you are unclear as to which union to obtain a consultation from, call them up. It is advisable to call the union anyway to check what their current procedures are and what materials should be included. Some have their own form to submit together with the other petition materials.

If there is no appropriate union, submit a letter with your petition explaining the situation and requesting a waiver of the labour consultation requirement. In this request for a waiver you must demonstrate that in your opinion, based on your long experience in the field, there is no appropriate labour organization from which to seek an advisory opinion. Attach any non-labour consultation(s) to your letter.

There may also be instances where more than one union must be consulted for the same petition. For example, an O-2 petition (support personnel for an accompanying O-1) may have musicians that fall under the American Federation of Musicians and dancers that fall under the American Guild of Musical Artists.

Union response times vary from 1 to 10 days. Some will fax you the consultation letter the day they receive your request; you can then copy the letter, attach it to the INS petition and send the petition off immediately. Others will send a hard copy in a week or so.

**Canadian** musicians and actors can work directly with the Canadian branches of the American Federation of Musicians and Actors' Equity for consultations.

#### **TIP**

When submitting the petition to a union, do not pressure them to expedite your request, and do not call them requesting a status report on your request. They do not react well to this type of pressure.

#### **TIP**

Union consultations for O-1 and O-2 petitions are good for two years. Keep the original and submit copies with the INS petitions.

## Labour Union List

*For instrumental musicians, musical groups  
(see also AGVA)*

*American Federation of Musicians (AFM)*  
1501 Broadway  
Suite 600  
New York, NY 10036  
Tel.: (212) 869-1330  
Fax: (212) 764-6134

### NOTE

The AFM has a simple one-page P-1 and P-3 Classification Questionnaire.

*American Federation of Musicians of the U.S. and Canada*  
75 The Donway West  
Suite 1010  
Don Mills, ON M3C 2E9  
Tel.: (416) 391-5161  
Fax: (416) 391-5165

*For performers in opera, classical concerts, choral concerts, dance and ballet, including solo and concert singers, dancers, choreographers, stage managers, directors and narrators*  
(see also AE, IATSE and SSDC)

*American Guild of Musical Artists (AGMA)*  
1727 Broadway  
New York, NY 10019-5284  
Tel.: (212) 265-3687  
Fax: (212) 262-9088

*For performers and stage managers in live-format presentations not included in AFM, AGMA or AGVA*

*Actors' Equity Association (AE)*  
165 West 46th Street  
New York, NY 10036  
Tel.: (212) 869-8530  
Fax: (212) 719-9815

*Canadian Actors' Equity Association*

44 Victoria Street  
12th Floor  
Toronto, ON M5C 3C4  
Tel.: (416) 867-9165  
Fax: (416) 867-9246

*For performers in night clubs, burlesque and circus*

*American Guild of Variety Artists (AGVA)*  
363 7th Avenue  
14th Floor  
New York, NY 10001  
Tel.: (212) 675-1003  
Fax: (212) 633-0097

### NOTE

As of June 2001, AGVA was still in dispute with INS offices over rules, etc. Nonetheless, AGVA does issue a consultation. Do not be alarmed by its tone or content. The INS accepts these as valid consultations.

*For directors of cinematography, technical and craft personnel*

*Association of Canadian Film Craftspeople*  
65 Heward Avenue  
Suite 105  
Toronto, ON M4M 2T5  
Tel.: (416) 462-0211  
Fax: (416) 462-3248

*International Alliance of Theatrical Stage Employees — East (IATSE)*  
1515 Broadway  
New York, NY 10036  
Tel.: (212) 730-1770  
Fax: (212) 921-7699 or (212) 730-7809

### NOTE

IATSE is the primary union used for support personnel for the majority of dance, theatre and music groups.



*International Alliance of Theatrical Stage Employees — West (IATSE)*  
13949 Central Blvd  
Suite 300  
Sherman Oaks, CA 91423  
Tel.: (818) 905-8999  
Fax: (818) 905-6297

*International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada*  
c/o CLC Office  
258 Adelaide Street East  
Suite 403  
Toronto, ON M5A 1N1  
Tel.: (416) 362-3569  
Fax: (416) 362-3483

*International Brotherhood of Electrical Workers*  
1125 15th Street NW  
Washington, DC 20005  
Tel.: (202) 833-7000  
Fax: (202) 728-7664

*International Brotherhood of Electrical Workers — Canada*  
45 Sheppard Avenue East  
Suite 401  
Willowdale, ON M2N 5Y1  
Tel.: (416) 226-5155  
Fax: (416) 226-1492

*National Association of Broadcast Employees and Technicians*  
501 3rd Street NW  
Washington, DC 20001  
Tel.: (202) 434-1254

**For performers in the film and audiovisual electronic media**

*American Federation of Television & Radio Artists*  
260 Madison Avenue  
New York, NY 10016  
Tel.: (212) 532-0800  
Fax: (212) 532-2242

*Alliance of Canadian Cinema, Television & Radio Artists*  
2239 Yonge Street  
Toronto, ON M4S 2B5  
Tel.: (416) 489-1311  
Fax: (416) 489-1435

*Screen Actors Guild*  
5757 Wilshire Blvd  
Los Angeles, CA 90036  
Tel.: (323) 954-1600  
Fax: (323) 549-6603

*Screen Actors Guild*  
1515 Broadway  
New York, NY 10036  
Tel.: (212) 944-1030  
Fax: (212) 944-6774

**For stage directors, stage and film choreographers other than those covered by AGMA**

*Society of Stage Directors and Choreographers (SSDC)*  
1501 Broadway  
Suite 1701  
New York, NY 10036  
Tel.: (212) 391-1070  
Fax: (212) 302-6195

**For stylists and those involved with set design, costumes, lighting, art direction and allied crafts (e.g. props)**

*United Scenic Artists (USA)*  
16 West 61st Street  
New York, NY 10023  
Tel.: (212) 581-0300  
Fax: (212) 977-2011

**For writers in the film and audiovisual electronic media**

For productions east of the Mississippi River:  
*Writers Guild of America — East*  
555 West 57th Street  
Suite 1230  
New York, NY 10019  
Tel.: (212) 757-7800  
Fax: (212) 582-1909



For productions west of the Mississippi River:

*Writers Guild of America — West*

8955 Beverly Blvd West

Hollywood, CA 90048

Tel.: (310) 550-1000

Fax: (310) 550-8185

***For management consultations for motion picture and television productions***

*Alliance of Motion Picture and Television Producers*

15503 Ventura Blvd

Encino, CA 91436

Tel.: (818) 995-3600

Fax: (818) 382-1793

***For certain press agents and managers***

*Association of Theatrical Press Agents and Managers (ATPAM)*

1560 Broadway

Suite 700

New York, NY 10036

Tel.: (212) 719-3666

Fax: (212) 302-1585

**Non-Labour Consultation List**

*American Symphony Orchestra League*

1156 15th Street NW

Suite 800

Washington, DC 20005

Tel.: (202) 776-0212

Fax: (202) 776-0224

*Association of Performing Arts Presenters*

1112 16th Street NW

Suite 400

Washington, DC 20036

Tel.: (202) 833-2787

Fax: (202) 833-1543

*Dance/USA*

1156 15th Street NW

Suite 820

Washington, DC 20005

Tel.: (202) 833-1717

Fax: (202) 833-2686

*OPERA America*

1156 15th Street NW

Suite 810

Washington, DC 20005

Tel.: (202) 293-4466

Fax: (202) 393-0735

*Recording Industry Association of America*

1020 19th Street NW

Suite 200

Washington, DC 20036

Tel.: (202) 775-0101

Fax: (202) 775-7253

**Petition Materials**

*Begin gathering these documents early!*

*All materials should be on standard 8½ x 11 paper — no oversized paper or bulky brochures.*

*Any non-English-language material must have a translation attached, with the translator's name and years of experience translating that particular language.*

*Do not staple materials or sections together — use paper clips if needed.*

*Mark "DUPLICATE" on the duplicate petition that is filed with each petition.*

*The INS two-hole punches the petitions at the top, hence reviewers flip each page upwards.*

*Make the petition easy for the examiner to handle.*



*The petitioner should make at least two copies of the complete petition — keep one and send one to the beneficiary.*

The petitioner will need all the information about the beneficiary that is listed below. Petitions are frequently delayed because artists have not checked their passports. Passports must be valid for **six months** after the expiration date of the visa. When providing date information to the petitioner and/or the INS, always list as mm/dd/yy.

- Full name (LAST, first, middle initial)
- Date of birth (mm/dd/yy)
- Country of birth
- Passport number
- Country where passport was issued
- Passport expiration date
- Job title
- Date started with group (mm/yy)

*While petition contents may vary from petition to petition, the following is a list of the items, and their order, that are common to the majority of petitions in the O and P classifications.*

**1. Cover letter to the INS, with cheque in the amount of US\$110 per petition**  
(for the union consultation, substitute this with cover letter to the union)

The cover letter should indicate:

- INS service center address;
- date (mm/dd/yy);
- classification being sought (and whether Premium Processing Service is being used);
- the beneficiaries (alphabetical order, last name in capitals, followed by first name); also mention the group name if a group)
- the petitioner;
- dates of intended employment (including travel dates);
- brief description of the artist/group and the intended activities;
- brief description of the petitioner and his/her qualifications.

If you are submitting a corresponding support personnel petition, be sure to provide details of both petitions in the cover letter. Use the same letter for both petitions.

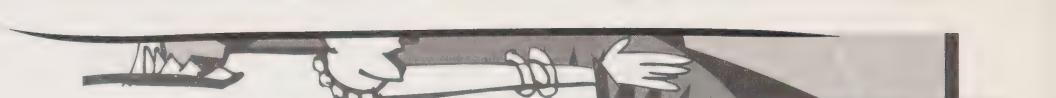
The cover letter should be on the petitioner's letterhead and should not exceed two pages.

**2. INS Form I-907 — Premium Processing Service**

If applying for Premium Processing Service, this form should follow the cover letter with a separate cheque in the amount of US\$1,000 per petition.

**3. Labour union consultation letter(s)**

Copy of the union consultation letter(s), or non-union consultation letter(s) if a union letter is unavailable.



#### 4. INS Form I-129

This is the primary form used by the INS for O and P visas. It is two pages long and requests information on the petitioner, has room for one beneficiary and requests brief information on the activities to be conducted by the beneficiary. Some questions may require the petitioner to create an addendum with further information.

Any addendum generated by the petitioner should be on plain white paper with:

- the INS service center address at the top left;
- date at the top right (mm/dd/yy);
- addendum identification (e.g., Addendum: Form I-129, Part 4, Question h1, prior classifications);
- classification being sought;
- petitioner's name and address;
- dates of intended employment;
- the addendum information.

**NOTE**

Items 4, 5 and 6 can be downloaded directly from the USINS Web site. Once in the pdf site for the forms, you will want to print pages 1, 2, 7, 9 and 10.

A typical addendum is:

*Part 4, Question h1, prior classifications*

List these with the most recent first. The list should include the I-797 Receipt Number (upper left corner of I-797 Approval Notice) and the dates the visa was valid for.

or

*Part 5, address where the person will work*

Whether a tour or a single date, write "see attached itinerary" here and include an addendum with the tour itinerary. While this does not need to be in great detail, it should include entry dates (e.g., May 12, 2001: arrive US at Ogdensburg, NY), set-up/rehearsal dates, performance dates with venue, presenter and presenter's address and phone number, and departure date. If there are to be multiple entries within the classification period, indicate these periods on the itinerary with a brief explanation as to what the artist or group will be doing during these periods. Canadian artists will often go back and forth during the period of a visa for Canadian tour dates, rehearsals, etc.

Any addendum to the I-129 should follow item 6.

***Processing Information (Part 4, Form I-129)***

This is the location where the beneficiary will apply for a visa. The INS will send/cable an original Form I-797 Approval Notice to the place of your choice (as well as an original to the petitioner). Designate one location per petition. You have three choices:

*Consulate:*

All aliens must apply for visas at a U.S. embassy or consulate abroad after receiving I-797 Approval Notice EXCEPT **Canadian** nationals or Canadian permanent residents who are nationals of Ireland or 52 Commonwealth countries. Indicate the consulate to which the beneficiary will apply (e.g., Montreal, Canada).



### *Pre-Flight Inspection:*

If **Canadian** — present your I-797 at the airport. Indicate from which airport you will be departing (e.g., Dorval Airport, Montreal, Canada).

### *Port of Entry (POE):*

If **Canadian** and arriving by car, bus or truck — indicate at which border crossing you will enter (e.g., Champlain, NY).

Above your choice write "PLEASE CABLE."

The INS will not send duplicate I-797s without a written application. If duplicate I-797s are needed, the petitioner must file an INS Form I-824 (with a US\$120 fee) at the INS office that approved your original application or petition; however, they take a long time to process these requests. It is highly recommended that a company have all personnel of a particular application apply for their visas at the same time and location.

If, however, you are a **Canadian** company and among the beneficiaries are non-Canadian nationals, indicate the nearest U.S. embassy or consulate for processing, because the non-Canadians must apply for their visas at a U.S. embassy or consulate. The remainder of the company (the Canadian nationals) will present the original I-797 at the port of entry or pre-flight inspection.

Following the above, Form I-129 asks for the alien's address. If a soloist, this would be his/her home address. If a group, it would be the address of the group's primary office.

## **5. INS Supplement to Form I-129, additional persons on petition**

Part 2, Question 4a of the I-129 asks for the total number of workers on the petition. If there are more than one, you must use this Supplement to list all others.

Make copies (two-sided) as needed.

Note: If members of a company are U.S. citizens, they do not need to be put on a petition. However, mention of them should be made in the cover letter to the union and the INS.

## **6. INS Supplement to Form I-129, O and P classifications**

This form is used to indicate the classification you are seeking. You will note that there is no space for O-2, P-1, P-1S, P-3 or P-3S. Create your own box to the right of those that are listed, check it and indicate the classification and brief description (e.g., P-3 Culturally Unique Entertainment Group). There is often confusion as to how to answer a couple of the requests on this form. "Explain the nature of the event" = briefly describe the artist or group. "Describe the duties to be performed" = briefly describe what the artist or group will be doing in the United States (national tour: mention key venues; festivals: mention any educational activities).

For both of these you have very little space.

## **7. Performance contracts**

Include a copy of each performance contract — no need to include any technical riders, etc. Keep everything simple and clean and on 8½ x 11 paper (reduce contracts if need be). Group all contracts together in their proper order with a paper clip and



attach a cover sheet with "Performance Contracts" at the top of the page. If contracts are unavailable at petition time, formal Letters of Agreement will suffice. These should be on manager or presenter (preferred) letterhead and should indicate the dates, fees to be paid, any other compensation (hotel, flights, ground) and a description of activities to be performed, and should be signed and dated by all parties.

## 8. Letters of support from presenters

These are very helpful to have. They should be on the presenter's letterhead and briefly describe the presenting organization and how the artist or group in question will help fulfil their presenting mission. Group these support letters together with a paper clip and attach a cover sheet titled "Letters of Support."

## 9. Authorization letter between artist/manager and petitioner

This is a simple letter explaining the relationship between the beneficiary (or his/her management) and the petitioner and authorizing the petitioner to act on behalf of the artist (beneficiary) in applying for a visa, overseeing its process and acting as liaison between the beneficiary and presenter(s). If an attorney is the petitioner, an INS Form G-28 must be used.

## 10. Press materials

As mentioned at the opening of the Non-Immigrant Visa Classifications section, the artist must provide the petitioner with the necessary materials to demonstrate the artist's eligibility for the particular visa classification sought. This is generally a variation of the artist's promotional package. However, do not overburden the INS with large promotional packages. The press materials submitted with a petition should be neat and concise. All materials must be in English. Do not include photographs, recordings or videos. Press and support materials should include:

- artist biography;
- one page of press excerpts;
- list of awards and honours;
- testimonials, awards from governments (if applicable);
- one-page list of recent touring history;
- three or four full performance reviews.

If the artist is touring a particular production, brief information regarding that production should be included.

*In addition to the above documents, a petition for support personnel should also include a one-page statement about the technicians and their importance to the production.*

*Attached to this should be brief (one or two paragraphs) biographies of the technicians and one page with the beneficiary information listed at the beginning of this section. Place this section after any addendum that follows item 6.*

### TIP

When filling out INS forms:

- type or print clearly using CAPITAL letters
- if an item does not apply to you, write "N/A"
- if the answer is none, write "NONE"
- list all beneficiaries in alphabetical order and maintain this same order with any addendum

## Where to File Your Petition — INS Service Center List

Following is a list of the four INS Service Centers and their respective jurisdictions. If giving a single performance or giving performances all in the same INS jurisdiction, you must file your petition with the service center under whose jurisdiction the performance(s) will be. However, if there will be performances in more than one INS jurisdiction, the petitioner sends the petition to the service center in his/her region. For example, if the performance is in California and the petitioner is based in New York, he/she files with the California Service Center. If there are dates in the west and midwest, the New York based petitioner would send the petition to the Vermont Service Center.

After you have sent in your petition, the INS will send you an I-797 Receipt Notice acknowledging receipt of your petition. Listed here will be a phone number that you can call to track the progress of your petition. While each Service Center has a Post Office Box address, listed here are street addresses for express delivery services.

*Note that each service center has two sets of addresses and/or phone numbers. The first listed is for "regular" (non-Premium Processing) processing. The second is the address to use if the Premium Processing Service is used. For PPS petitions there is also an e-mail address with which to communicate with the INS regarding your PPS petition.*

### **Jurisdiction: CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, PR, RI, VA, VT, WV**

US Immigration and Naturalization Service  
VERMONT SERVICE CENTER  
75 Lower Welden Street  
St. Albans, VT 05479  
Tel.: (802) 527-3160

US Immigration and Naturalization Service  
Premium Processing Service  
VERMONT SERVICE CENTER  
30 Houghton Street  
St. Albans, VT 05478-2399  
Tel.: (802) 527-4828  
E-mail:  
VSC.Premium.Processing@usdoj.gov

### **Jurisdiction: AZ, CA, GUAM, HI, NV**

US Immigration and Naturalization Service  
CALIFORNIA SERVICE CENTER  
24000 Avila Road, 2nd Floor  
Laguna Niguel, CA 92677  
Tel.: (949) 831-8480

US Immigration and Naturalization Service  
Premium Processing Service  
CALIFORNIA SERVICE CENTER  
24000 Avila Road, Room 2302  
Laguna Niguel, CA 92677  
Tel.: (949) 831-9670  
E-mail:  
CSC.Premium.Processing@usdoj.gov

### **TIP**

When sending your petition to the INS:

- put petition in an envelope and then into the courier package
- label each envelope (inner and courier packaging) with the type of petition (e.g., Form I-129, P-1, PPS, 12/30/01-03/20/02)
- mail package to the INS so that it arrives on a Tuesday or Wednesday



**Jurisdiction:** AK, CO, IA, ID, IL, IN, KS, MI, MN, MO, MT, ND, NE, OH, SD, UT, WA, WI, WY

US Immigration and Naturalization Service

NEBRASKA SERVICE CENTER  
PO Box 82521  
Lincoln, NE 68501-2521  
Tel.: (402) 323-7830

US Immigration and Naturalization Service

Premium Processing Service  
NEBRASKA SERVICE CENTER  
850 S Street  
Lincoln, NE 68508  
Tel.: (402) 474-5012  
E-mail:

NSC.Premium.Processing@usdoj.gov

**Jurisdiction:** AL, AR, FL, GA, KY, LA, MS, NC, NM, OK, SC, TN, TX  
US Immigration and Naturalization Service

TEXAS SERVICE CENTER  
PO Box 851488 — Dept A  
Mesquite, TX 75185-1488  
Tel.: (214) 381-1423

Note: standard processing petitions must be sent by US Postal Express Mail

US Immigration and Naturalization Service

Premium Processing Service  
TEXAS SERVICE CENTER  
4141 North St. Augustine Road  
Dallas, TX 75227  
Tel.: (214) 275-9502  
E-mail:

TSC.Premium.Processing@usdoj.gov

## YOU'RE APPROVED — NOW WHAT?

As soon as the petitioner receives the I-797 Approval Notice, he/she should make a clean copy (for their files) and send the original to the beneficiary via air courier. The beneficiary should also have a copy of the petition itself.

The beneficiary should make several clean, two-sided copies of the I-797.

If a group/company, the beneficiary may need multiple copies for members travelling at different times.

## Consular Procedures

Once you have received your I-797 Notice of Action, and assuming it is an Approval Notice, the artist(s), if non-Canadian, may now apply for his/her visa at the U.S. embassy or consulate designated on the Form I-129. Each consulate has different procedures and requirements.

*Plan ahead: Call the consulate soon after you send the petition to the INS to find out its particular requirements.*

By the time you receive the I-797, time will undoubtedly be running short. U.S. embassies and consulates can be slow. It is advisable to develop (and maintain) a relationship with the consulate.

Due to the rotational nature of Foreign Service assignments, it is most important that correspondence to a Foreign Service post be addressed to a section or position rather than to an officer by name. This will eliminate delays resulting from the forwarding of official mail

### NOTE

**Canadians** need only present an original I-797 at the pre-flight inspection or port of entry. Canadians are not issued an actual visa but must give proof of INS approval nonetheless.



to personnel who have transferred. For example, correspondence concerning INS matters should be addressed simply "Immigration Section," followed by the name and correct mailing address of the post.

Some consulates will allow one company representative to appear at the consulate with all the company's passports and other required information. Processing times vary with each consulate. Be prepared!

Generally speaking, consulates require the following materials:

- completed Form OF-156: this is a form issued by the State Department for aliens wishing to apply for a visa;
- valid passport that extends at least six months beyond the end of the tour (with at least two blank pages available);
- one passport-type photo that shows the full face on a light-coloured background;
- the original I-797 Approval Notice(s);
- copy of the petition(s) sent to the INS;
- US\$45 visa application fee per beneficiary;
- visa issuance fee if applicable.

A list of addresses and contact numbers for the U.S. Embassy and consulates in Canada appears in "For More Information."

## Port of Entry or Pre-Flight Inspection

In principle, with the I-797 in hand (Canadian citizens) and/or a visa from a U.S. embassy or consulate (non-Canadians), there should be no problems at the port of entry (arrival by ground at a border crossing) or at the pre-flight inspection. Nonetheless, be advised that INS personnel at POEs and airports have the authority to deny an alien admission into the United States for any number of reasons.

### TIP

Try to arrive in a secondary city or at one of the many smaller border crossings. Avoid arriving with a large contingent of support personnel and family members.

*Technical equipment and musical instruments:* Going through customs inspection will be a lot easier if you list all the items you will be temporarily exporting on an ATA Carnet. Details can be obtained from the Canadian Chamber of Commerce, 1080 Beaver Hall Hill, Suite 1630, Montreal, QC H2Z 1T2; tel.: (514) 866-4334.

Whether you obtain a carnet or not, create a list with:

- item description;
- serial number;
- date purchased;
- where purchased;
- purchase cost;
- current resale value.

### TIP

It is best if your equipment and instruments are in proper road cases with the company/group name clearly marked on each and with cases numbered to correspond with the list created.

## *A Word of Caution*

Minor criminal convictions or certain health problems, as well as certain types of past and present political activity, may result in your being denied entry to the United States. If you think you may have a skeleton in your closet, check with the U.S. Embassy or a consulate



in Canada first so you are prepared at the border. In many circumstances, you will be able to obtain a waiver of ineligibility (Form I-192) from the nearest office of the USINS. The waiver can take up to six months to process. If you need to cross the border frequently to perform, ask for a border crossing card along with your waiver. Please note that a Canadian pardon does not apply for U.S. immigration purposes.

### **Extension of Stay**

Generally, an artist applies for an Extension of Stay when additional dates have been added to a tour. If you are already on tour with a proper non-immigrant visa that is still valid and the petitioner remains the same (and you have not committed any crimes that would make you ineligible), the application for an Extension of Stay for an O or P classification requires:

- letter from the petitioner explaining the request (additional tour dates, media work following tour, etc.);
- Form I-129, its supplements and any addendum and proper fee(s);
- copy of the front and back of each Form I-94 (if applicable);
- copy of the original I-797 Approval Notice (front and back);
- copy of the original labour consultation(s);
- beneficiary list (if more than one beneficiary);
- copy of new contracts (or Letters of Agreement);
- new itinerary.

You must apply to extend your status if you wish to stay longer than the date indicated in the lower right-hand corner of your INS Form I-94 (Arrival-Departure Record). *Please note: you must submit the application for an Extension of Stay BEFORE your current authorized stay expires.* You must also keep your passport valid for your entire stay in the United States.

If dependents are travelling with the beneficiary, they must submit the following to the INS:

- brief letter explaining the request;
- INS Form I-539 with the applicable fee;
- copy of dependent's Form I-94 (front and back);
- proof of prior filing for the principal alien with whom dependent is travelling (I-797 Approval Notice).

### **Additions or Replacements to an Already Approved Petition**

This is a major problem and one to be avoided if at all possible. Know who your personnel will be for a performance or tour when making the original application. Keep company personnel healthy and happy. A replacement or addition must file a separate petition with all the same materials, fees and deadlines. A new union consultation is not necessary. If you are worried about the possibility of a company member not being able to make the tour, replace him/her before filing the original petition. Or, if possible, include alternative personnel in your petition (no need to single them out — list them with all the others). If in the end they are not needed, they simply do not accompany the rest of the group.



## DOES THE INS TALK WITH THE IRS?

Yes! A copy of the I-797 Approval Notice(s) is sent to the Internal Revenue Service. While this guide is not about taxes, foreign artists entering the United States should be aware of the basics.

In many instances, a U.S. presenter, in the absence of a Social Security Number or Federal ID Number for a foreign artist, must withhold any applicable federal and state taxes from gross fees to be paid to the artist. The Foreign Withholding Tax (Federal) is currently 30 percent. **Canadian** residents who are contracted by the presenter as *independent contractors* and who tour the United States frequently may not be subject to the Foreign Withholding Tax. A **Canadian** not-for-profit company is exempt. Be sure to supply the presenter with a copy of the corporate papers that demonstrate proof of not-for-profit status.

Whether a U.S. presenter withholds the Foreign Withholding Tax from gross fees is dependent on the tax treaties in effect with the artist's country at the time and/or whether the artist is exempt from withholding taxes for other reasons.

In addition to Federal Withholding Tax, some states have a Non-Resident State Tax. This was begun by California several years ago, and many states have since followed suit. The Non-Resident State Tax, if applicable, is withheld by the presenter and varies from state to state; it is generally between 4 percent and 7 percent of gross fees. There are no exemptions; however, an artist can apply for a reduction or waiver. This is generally done through a tax agent.

Regardless of what taxes are withheld, artists performing in the United States should file a U.S. tax return on U.S. earned income. Any exemption from this should accompany the tax return; or provide the appropriate form indicating an exemption.

Artists are strongly encouraged to seek advice about their U.S. income tax liability from a tax attorney or agent who is familiar with the tax treaties between the United States and his/her country.

## FREQUENTLY ASKED QUESTIONS

### ***What is Premium Processing?***

The Premium Processing Service was introduced by the INS in June 2001. It guarantees adjudication of a petition within 15 calendar days or your money back. The fee is US\$1,000 per petition (separate cheque) in addition to any other applicable petition fees.

### ***Can I request Premium Processing for a pending petition?***

Yes. File INS Form I-907, together with the required US\$1,000 fee per petition. The 15 calendar day processing period begins on the date the INS receives the I-907 and fee.

### ***Is anyone exempt from the Premium Processing Service fee?***

No. There are no exemptions. While not-for-profit petitioners are exempt from the US\$1,000 fee, this does not mean they can file a Form I-907 and receive its benefits. They must pursue the traditional expedite process, based on five criteria:

- severe financial loss to a company or individual;
- extreme emergent situation;



- humanitarian situation;
- Department of Defense or national interest situation;
- INS error.

#### ***One of my artists or technicians is sick — what do I do?***

This is a major problem to be avoided at all costs. Keep company personnel healthy and happy. A replacement must file a separate petition with all the same materials, fees and deadlines. A new union consultation is not necessary. If you are worried about the possibility of company personnel not being able to make the tour, include possible alternative personnel in your petition (no need to single them out — list them with all the others). If they are not needed, they simply do not accompany the rest of the group, although you may want to mention their absence at the port of entry, pre-flight inspection or consulate.

#### ***I have received my I-797 Approval Notice and the tour has begun, but I need to add personnel. What do I do?***

As in the question above, this is a situation to be avoided. The advice from one service center (Vermont) is that you must file a new I-129 petition for everyone so that the additional person(s) is listed together with the others. In your cover letter to the INS, explain that you are filing an Amended Petition and give the reasons for the additional personnel. This situation will, of course, necessitate using the Premium Processing Service.

#### ***Is my I-797 Approval Notice my visa?***

Yes and no. If you are a **Canadian** citizen, you are not required to apply for a visa. The I-797 will suffice at the port of entry or pre-flight inspection. If you are not a Canadian citizen, the I-797 is permission for you to now apply for your visa at a U.S. embassy or consulate.

#### ***What is the maximum amount of time one can apply for?***

This depends on the classification. The maximum for an O visa is three years; for a P visa it is one year.

#### ***How much time should be allowed to file a petition?***

The process of gathering petition materials should begin when booking the dates. Once all materials are gathered, allow a full day to prepare the petition and make the necessary copies. Allow 2 to 10 days for the union consultation. Allow 120 days for INS processing — unless using the PPS, in which case allow 15 days.

#### ***I've been denied — what do I do?***

This, of course, is the worst-case scenario. The normal procedure is to refile the petition with additional documentation to support the classification you are seeking. However, there is never enough time for this. It is best to call in any and all contacts the petitioner may have, from congressional representatives and senators to mayors or an immigration lawyer.

## FOR MORE INFORMATION

### Department of Foreign Affairs and International Trade

#### Consular Affairs Bureau

Web site: <http://www.voyage.gc.ca>  
E-mail: [voyage@dfait-maeci.gc.ca](mailto:voyage@dfait-maeci.gc.ca)

#### *Publications (free)*

*Bon Voyage, But... Information for the Canadian Traveller*  
*China (Including Hong Kong): A Guide for Canadian Visitors*  
*Crossing the 49th: Advice for Canadians Travelling to the United States*  
*Destination: Success — Services for Business Travellers*  
*Guide for Canadians Imprisoned Abroad*  
*Her Own Way: Advice for the Woman Traveller*  
*International Adoption (on-line only)*  
*International Child Abductions: A Manual for Parents*  
*México: ¿Qué pasa? A Guide for Canadian Visitors*  
*Out on a Limb: Advice for the Adventure Traveller*  
*Retirement Abroad: Seeing the Sunsets*  
*Teaching English in Korea (on-line only)*  
*Teaching English in Taiwan (on-line only)*  
*Travelling Abroad? Assistance for Canadians*  
*What No Child Should Endure*  
*Working Abroad: Unravelling the Maze*

To access or order:

Consult the Consular Web site (see above)  
or  
Tel.: 1-800-267-8376 (in Canada)  
or (613) 944-4000

### Arts and Cultural Industries Promotion Division

Web site: <http://www.dfaid-maeci.gc.ca/arts>

### U.S. Immigration and Naturalization Service

Web site:

<http://www.ins.usdoj.gov/graphics/index.htm>  
To download USINS forms:  
<http://www.ins.usdoj.gov/graphics/formsfee/forms/index.htm>

### U.S. State Department

Table listing the visa reciprocity fees:  
<http://www.travel.state.gov/reciprocity/index.htm>  
To download Form OF-156:  
[http://www.travel.state.gov/visa\\_services.html](http://www.travel.state.gov/visa_services.html)

### Other Resources

American Symphony Orchestra League  
1156 15th Street NW, Suite 800  
Washington, DC 20005-1704  
Tel.: (202) 776-0212  
Fax: (202) 776-0224  
E-mail: [league@symphony.org](mailto:league@symphony.org)  
Web site: <http://www.symphony.org>

Arts Presenters  
1112 16th Street NW, Suite 400  
Washington, DC 20036  
Tel.: (202) 833-2787  
Fax: (202) 833-1543  
Web site: <http://www.artspresenters.org>

Touchlantic International, Inc.  
8701 Irvington Avenue  
Bethesda, MD 20817  
Tel.: (301) 530-4237  
Fax: (301) 530-0443  
E-mail:  
[touchlanticinternational@erols.com](mailto:touchlanticinternational@erols.com)  
(U.S. income taxes for foreign athletes and entertainers)



Jonathan Ginsburg  
Fettmann, Tolchin & Majors, P.C.  
10615 Judicial Drive  
Fairfax, VA 22030-7501  
Tel.: (703) 385-9500  
Fax: (703) 385-9893  
(immigration law)

Gami/Simonds, Inc.  
24 Church Hill Road  
Washington Depot, CT 06794  
Tel.: (860) 354-5295  
Fax: (860) 354-5298  
E-mail: [gaminsim@worldnet.att.net](mailto:gaminsim@worldnet.att.net)  
(preparation and filing of non-immigrant  
visas for entertainers and entertainment  
groups)

## Canadian Government Offices in the United States

### Washington

Embassy of Canada  
501 Pennsylvania Avenue NW  
Washington, DC 20001  
Tel.: (202) 682-1740  
Fax: (202) 682-7726  
E-mail: [wshdc.consul@dfait-maeci.gc.ca](mailto:wshdc.consul@dfait-maeci.gc.ca)  
Web site: <http://www.canadianembassy.org>

### Atlanta

Consulate General of Canada  
1175 Peachtree Street NE  
100 Colony Square, Suite 1700  
Atlanta, GA 30361-6205  
Tel.: (404) 532-2000  
Fax: (404) 532-2050  
E-mail: [atnta@dfait-maeci.gc.ca](mailto:atnta@dfait-maeci.gc.ca)  
Web site: <http://www.can-am.gc.ca/atlanta>

### Boston

Consulate General of Canada  
3 Copley Place, Suite 400  
Boston, MA 02116  
Tel.: (617) 262-3760  
Fax: (617) 262-3415  
E-mail: [bostn@dfait-maeci.gc.ca](mailto:bostn@dfait-maeci.gc.ca)  
Web site: <http://www.can-am.gc.ca/boston>

### Buffalo

Consulate General of Canada  
1 HSBC Center, Suite 3000  
Buffalo, NY 14203-2884  
Tel.: (716) 858-9500  
Fax: (716) 852-4340  
E-mail: [bfalo@dfait-maeci.gc.ca](mailto:bfalo@dfait-maeci.gc.ca)  
Web site:  
<http://www.canada-congenbuffalo.org>

### Chicago

Consulate General of Canada  
Two Prudential Plaza  
180 North Stetson Avenue, Suite 2400  
Chicago, IL 60601  
Tel.: (312) 616-1860  
Fax: (312) 616-1877  
E-mail: [chego-cs@dfait-maeci.gc.ca](mailto:chego-cs@dfait-maeci.gc.ca)  
Web site: <http://www.canadachicago.net>

### Dallas

Consulate General of Canada  
St. Paul Place  
750 North St. Paul Street, Suite 1700  
Dallas, TX 75201-3247  
Tel.: (214) 922-9806  
Fax: (214) 922-9815  
E-mail: [dallas@dfait-maeci.gc.ca](mailto:dallas@dfait-maeci.gc.ca)  
Web site: <http://www.can-am.gc.ca/dallas>

### Detroit

Consulate General of Canada  
600 Renaissance Center, Suite 1100  
Detroit, MI 48243-1798  
Tel.: (313) 567-2340  
Fax: (313) 567-2164  
E-mail: [dtrot@dfait-maeci.gc.ca](mailto:dtrot@dfait-maeci.gc.ca)  
Web site: <http://www.can-am.gc.ca/detroit>

### Honolulu

Consulate General of Australia  
Bishop Trust Building, Penthouse Suite  
1000 Bishop Street  
Honolulu, HI 96813-4299  
Tel.: (808) 524-5050/5054  
Fax: (808) 531-5142



### **Los Angeles**

Consulate General of Canada  
550 South Hope Street, 9th Floor  
Los Angeles, CA 90071-2627  
Tel.: (213) 346-2700  
Fax: (213) 620-8827  
E-mail: [lnpls@dfait-maeci.gc.ca](mailto:lnpls@dfait-maeci.gc.ca)  
Web site: <http://www.cdnconsulat-la.com>

### **Miami**

Consulate General of Canada  
200 South Biscayne Boulevard, Suite 1600  
Miami, FL 33131  
Tel.: (305) 579-1600  
Fax: (305) 374-6774  
E-mail: [miami@dfait-maeci.gc.ca](mailto:miami@dfait-maeci.gc.ca)  
Web site: <http://www.can-am.gc.ca/miami>

### **Minneapolis**

Consulate General of Canada  
701 Fourth Avenue South, Suite 900  
Minneapolis, MN 55415-1899  
Tel.: (612) 333-4641  
Fax: (612) 332-4061  
E-mail: [mnpls@dfait-maeci.gc.ca](mailto:mnpls@dfait-maeci.gc.ca)  
Web site:  
<http://www.can-am.gc.ca/minneapolis>

### **New York**

Consulate General of Canada  
1251 Avenue of the Americas  
Concourse Level  
New York, NY 10020-1175  
Tel.: (212) 596-1628  
Fax: (212) 596-1790  
E-mail: [cngny@dfait-maeci.gc.ca](mailto:cngny@dfait-maeci.gc.ca)  
Web site: <http://canada-ny.org>

### **San Juan, Puerto Rico**

Consulate of Canada  
Bolivia Street No. 33  
7th Floor, Hato Rey, San Juan  
Puerto Rico 00917-2010  
Tel.: (787) 759-6629  
Fax: (787) 294-1205

### **Seattle**

Consulate General of Canada  
412 Plaza 600  
Sixth Avenue and Stewart Street  
Seattle, WA 98101-1286  
Tel.: (206) 443-1777  
Fax: (206) 443-9662  
E-mail: [seatl@canada-seattle.org](mailto:seatl@canada-seattle.org)  
Web site: <http://www.canada-seattle.org>

### **U.S. Government Offices in Canada**

#### **Ottawa**

Embassy of the United States of America  
Immigration Section  
490 Sussex Drive  
Ottawa, ON K1N 1G8  
Tel.: 1-800-283-4356 or (613) 238-5335  
Fax: (613) 688-3097  
Web site: <http://www.usembassycanada.gov>  
Mailing Address:  
PO Box 866, Station B  
Ottawa, ON K1P 5T1

#### **Calgary**

U.S. Consulate General  
Immigration Section  
615 Macleod Trail SE, Suite 1050  
Calgary, AB T2G 4T8  
Tel.: (403) 266-8962  
Fax: (403) 264-6630

#### **Halifax**

U.S. Consulate General  
Immigration Section  
Purdy's Wharf Tower II, Suite 904  
1969 Upper Water Street  
Halifax, NS B3J 3R7  
Tel.: (902) 429-2480  
Fax: (902) 423-6861



### **Montreal**

U.S. Consulate General  
Immigration Section  
1155 rue Saint-Alexandre  
Montreal, QC H2Z 1Z2  
Tel.: (514) 398-9695  
Fax: (514) 398-9430  
Mailing Address:  
PO Box 65  
Postal Station Desjardins  
Montreal, QC H5B 1G1

### **Quebec City**

U.S. Consulate General  
Immigration Section  
2 Place Terrasse Dufferin  
Quebec, QC G1R 4T9  
Tel.: (418) 692-2095  
Fax: (418) 692-4640  
Mailing Address:  
PO Box 939  
Quebec, QC G1R 4T9

### **Toronto**

U.S. Consulate General  
Immigration Section  
360 University Avenue  
Toronto, ON M5G 1S4  
Tel.: (416) 595-1700  
Fax: (416) 595-0051

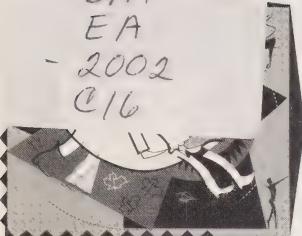
### **Vancouver**

U.S. Consulate General  
Immigration Section  
1075 West Pender Street  
Mezzanine Level  
Vancouver, BC V6E 2M6  
Tel.: (604) 685-4311  
Fax: (604) 685-5285  
Mailing Address:  
1095 West Pender Street  
Vancouver, BC V6E 2M6

# CANADIAN PERFORMERS

## How to Enter the United States QUICK REFERENCE GUIDE

CA1  
EA  
- 2002  
C16



The following is designed for those already familiar with U.S. INS procedures. It is the intention of this guide to provide a checklist for INS visa classifications, procedures, required materials and deadlines related to individual Canadian performing artists as well as theatre, dance, circus and musical groups based in Canada, but not necessarily employing solely Canadians.

If you wish to obtain a copy of the complete guide, contact:

Enquiries Service, Department of Foreign Affairs and International Trade  
125 Sussex Drive, Ottawa, ON K1A 0G2

Tel.: **1-800-267-8376** (in Canada) or (613) 944-4000

Both versions are also available on-line: [www.voyage.gc.ca](http://www.voyage.gc.ca)

### THE INS TIMELINE

- Book performance date/tour; determine INS classification; gather materials needed for INS petition.
- Designate petitioner (must be U.S.-based).
- Prepare the INS petition package.
- Send copy of INS petition to labour union(s) for consultation letter(s).
- Receive labour consultation(s) (2-10 days); make copies for petition.
- Petitioner sends petition (in duplicate) to INS service center.
- Send copy of petition to artist.
- Artist contacts U.S. embassy or consulate to obtain forms and instructions for visa application (non-Canadians only).
- Petitioner receives Notice of Receipt from the INS (2-3 weeks).
- Petitioner receives I-797 Approval Notice (15-120 days, depending on whether Premium Processing Service is used).
- Petitioner sends original of I-797 to artist.
- If applicable, artist makes appointment with U.S. embassy or consulate to apply for and obtain visas (Canadian nationals need only present I-797 at port of entry or pre-flight inspection).

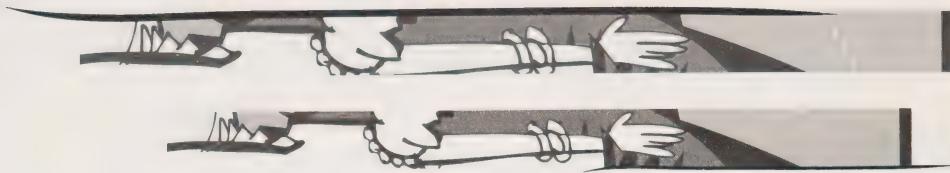
### NON-IMMIGRANT VISA CLASSIFICATIONS

#### O-1

*For an individual (one person only on the petition) of extraordinary ability in the sciences, arts, education, business, athletics, or extraordinary achievements in the motion picture and television fields. An O-1 visa is approved for a maximum of three years for a specific performance, film shoot or tour.*

#### O-2

*For essential support personnel (including performers) accompanying the O-1. Submit documented evidence demonstrating that the support personnel possess "critical skills and experience" based on a long-standing working relationship with the O-1 artist. An O-2 visa is approved for the same length of time as the accompanying O-1.*



## **P-1**

*Members of an internationally recognized entertainment group (music ensembles, dance and theatre companies, circus troupes).* It is the reputation of the group that must be demonstrated, not the individual achievements of its members. Seventy-five percent of the group's members must have been with the group for at least one year. A P-1 visa is approved for a maximum of one year for a specific performance or tour.

## **P-2**

*Participant(s) in a reciprocal exchange program.* You qualify for a P-2 if you are entering the United States temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the United States and an organization in another country. The petition must be filed by the sponsoring organization or employer in the United States.

## **P-3**

*Culturally unique performers, performing groups, teachers or coaches.* You qualify for a P-3 visa if you are a "culturally unique" individual performing artist or entertainment group entering the United States to perform, teach or coach under a commercial or non-commercial "culturally unique" program. For the P-3 classification, there is no specific time the members have to have been together.

## **P Support Personnel**

Essential support personnel for P-1, P-2 or P-3 groups petition separately from the corresponding petition for the performers. The INS designates support petitions as P-1S, P-2S or P-3S respectively. P support petitions cannot be submitted in advance of the main petition; they should be sent to the INS at the same time as the corresponding performer petition. Submit documented evidence establishing the "essential role, critical skills and experience" of the support person(s) to the group.

## **H-2B**

If you are a musician and are going to perform within 80 km (50 miles) of the Canada-U.S. border, you have the option of applying under the H-2B classification.

## **Spouses and Dependents**

The spouse and unmarried children accompanying an O-1, O-2, P-1, P-2 or P-3 performing artist or essential support person may qualify for a corresponding O-3 or P-4 visa. DO NOT include spouse or dependents on the principal beneficiary's INS Form I-129. If the spouse/dependent(s) are Canadian citizens, presenting proof of relationship, together with the principal beneficiary's I-797, suffices at a port of entry or pre-flight inspection.

## **PETITION MATERIALS**

The petitioner will need the beneficiary information listed below. Passports must be valid for SIX MONTHS after the expiration date of the visa.

- Full name (LAST, first, middle initial)
- Date of birth (mm/dd/yy)
- Country of birth
- Passport number
- Country where passport was issued
- Passport expiration date (mm/dd/yy)
- Job title
- Date started with group (mm/yy)



Following is a list of the items, and their order, that are common to most Form I-129 O and P classification petitions. Generally, the same content is required for union consultation(s). When providing dates to the INS, list them as mm/dd/yy. Type or print clearly using CAPITAL letters. If a question does not apply to you write "N/A"; if the answer is none write "NONE." List beneficiary information in alphabetical order and maintain this order with any addendum.

1. Cover letter to the INS with cheque in the amount of \$110 per petition. Letter to include: classification, beneficiary, petitioner, dates of employment, brief description of artist and intended activities, brief description of petitioner
2. If used, Form I-907 for Premium Processing Service (PPS) with separate cheque in the amount of \$1,000 per petition
3. Labour union consultation letter(s)
4. INS Form I-129
5. INS Supplement to Form I-129 (only if more than one beneficiary)
6. INS Supplement to Form I-129, O and P Classifications
7. If applicable, any addendum to questions on Form I-129 (prior classifications, tour itinerary, etc.); each addendum should be on a separate page with petition identification details
8. Performance contracts
9. Letters of support from presenters
10. Authorization letter between artist/manager and petitioner (or Form G-28 if an attorney)
11. Artist press materials — keep it simple. Include biography, one-page press excerpts, list of awards and honours, one-page recent tour history, three or four full performance reviews. All materials must be in English or be accompanied by a certified translation.

If petitioning for support personnel, include, after item 7, a one-page statement about the support personnel and their importance to the production or tour. Attach brief biographies of the support personnel.

To download INS forms: [www.ins.usdoj.gov/graphics/formsfee/forms/index.htm](http://www.ins.usdoj.gov/graphics/formsfee/forms/index.htm)

#### A NOTE REGARDING PPS

June 1, 2001: The INS introduced the Premium Processing Service (PPS). As a result, the turnaround time for the four INS service centers can no longer be counted on to fall within the traditional 30-60 days. There are now two tiers of adjudication:

**WITH the PPS:** The INS guarantees adjudication of a petition within 15 calendar days. The fee is US\$1,000 per petition. If they fail to adjudicate in 15 days, they return your fee and the petition is placed in the general pool of "standard processing" petitions.

**WITHOUT the PPS:** It is advisable at this time to plan on 120 days, regardless of the service center used.

#### Clarification...

Many have interpreted the INS rulings on the PPS to mean that petitioners that are non-profit organizations are exempt from the PPS fee. While non-profit petitioners are indeed exempt from the \$1,000 fee, this does not mean they can file a Form I-907 and receive its benefits. They can, however, pursue the traditional expedite process, based on five criteria: severe financial loss to a company or individual; extreme emergent situation; humanitarian situation; Department of Defense or national interest situation; INS error.



## POST-APPROVAL CHECKLIST

- Make copy of I-797 Approval Notice(s).
- Send original I-797 to artist.
- If artist is a Canadian national, present original I-797 at pre-flight inspection or port of entry. Canadians are not issued an actual visa, but must give proof of INS approval nonetheless.
- If artist is not a Canadian national, he/she must apply for a visa at a U.S. embassy or consulate:
  - completed Form OF-156 (issued by the consulate);
  - valid passport that extends at least six months beyond the end of tour (with at least two blank pages available);
  - one passport-type photo that shows the full face on a light-coloured background;
  - the original I-797 Approval Notice(s);
  - copy of the petition(s) sent to the INS;
  - US\$45 visa application fee per beneficiary;
  - visa issuance fee if applicable.

For a complete table of the visa reciprocity fees, visit the State Department Web site:  
[www.travel.state.gov/reciprocity/index.htm](http://www.travel.state.gov/reciprocity/index.htm)

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Department of Foreign Affairs and International Trade  
125 Sussex Drive  
Ottawa, ON K1A 0G2  
Tel.: 1-800-267-8376 (in Canada) or (613) 944-4000

*Ce document est aussi disponible en français.*

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Ministère des Affaires étrangères  
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Canada